

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

ORDER
00-CR-9S

PETER GERACE AND
MICHAEL GEIGER,

Defendants.

1. On April 6, 2006, the Government filed motions for notice under Rule 32(h) of the Federal Rules of Criminal Procedure as to each defendant. At this time, this Court does not anticipate departing from the Sentencing Guidelines on a basis not previously identified. However, the parties are advised that this Court is considering imposing joint and several restitution as to each defendant in an amount greater than the \$3,600 contemplated in the plea agreements.

2. Given their role in this conspiracy and under the authority of 18 U.S.C. § 3663 and case law such as the Second Circuit's decision in United States v. Boyd, this Court is considering imposing restitution jointly and severally against each defendant in an amount encompassing the agreed-upon \$3,600 and the restitution amounts attributable to co-conspirators Brandon DelPrince and Anthony Gugino. See 222 F.2d 47, 50-51 (2d Cir. 2000) (per curiam) (discussing restitution under § 3663 and noting that "courts have uniformly read [§ 3663] to provide for restitution payable by all convicted co-conspirators in respect of damage suffered by all victims of a conspiracy, regardless of the facts underlying counts of conviction in individual prosecutions"). As such, this Court is considering imposing restitution against each defendant in an approximate amount of

\$271,000.¹

3. This Court has not made a final decision regarding the amount of restitution it will order. The parties shall be given the opportunity to file submissions on this issue by the date indicated below. The parties are free to address any issues related to restitution that they deem appropriate, but shall include a discussion of both this Court's legal authority to impose restitution as discussed above, as well as whether this Court should exercise its discretion to order restitution in an amount greater than set forth in the plea agreements.

IT HEREBY IS ORDERED, that the Government's Motions for Notice (Docket Nos. 170 and 171) are GRANTED.

FURTHER, that the parties shall file submissions related to the issue of restitution as discussed above on or before Wednesday, May 10, 2006.

FURTHER, that counsel and the defendants shall appear before this Court as previously scheduled on Monday, May 22, 2006, at 9:00 a.m. in Part IV, United States Courthouse, 68 Court Street, Buffalo, New York for sentencing.

SO ORDERED.

Dated: April 13, 2006
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge

P:\ECF Documents\Gerace-Geiger.Restitution.4-13-06.wpd

¹This is the sum of \$3,600, the expected restitution amount for Brandon DelPrince, and the expected restitution amount for Anthony Gugino.